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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 BRENDAN McKOWN, a single
10 individual,

11 Plaintiff,

12 v.

13 SIMON PROPERTY GROUP, INC. d/b/a
14 TACOMA MALL, a Delaware
corporation; IPC INTERNATIONAL
CORPORATION, an Illinois corporation,

15 Defendants.
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CASE NO. C08-5754BHS

ORDER DENYING
PLAINTIFF'S MOTION FOR
LEAVE TO AMEND

17 This matter comes before the Court on Plaintiff's Motion for Leave to Amend
18 (Dkt. 27). The Court has considered the pleadings filed in support of and in opposition to
19 the motion and the remainder of the file and hereby denies the motion for the reasons
20 stated herein.

21 **I. PROCEDURAL HISTORY**

22 On November 12, 2008, Plaintiff filed a complaint against Defendants Simon
23 Property Group, Inc. and IPC International Corporation in Pierce County Superior Court.
24 On November 17, 2008, Defendants filed a Notice of Removal. Dkt. 1.

25 On January 1, 2009, Plaintiff filed an amended complaint, seeking to add
26 Dominick Sergio Maldonado as a defendant because Plaintiff was shot by Mr. Maldonado
27 multiple times on Defendant's premises. Dkt. 9.
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1 On February 3, 2009, Plaintiff filed a motion for remand for lack of complete
2 diversity based on the addition of Mr. Maldonado as a defendant. Dkt. 14. Defendants
3 Simon Property Group and IPC filed a response in opposition to Plaintiff's motion. Dkt.
4 21. Simon Property Group and IPC maintain that Plaintiff's amended complaint is
5 invalid because he failed to first seek leave of the Court as required by 28 U.S.C. §
6 1447(e). In his reply, Plaintiff stated that he has voluntarily stricken the amended
7 complaint and "filed a cross-motion for leave of court to amend his complaint to add
8 Maldonado as a defendant." Dkt. 24 at 1.

9 On February 5, 2009, Simon Property Group and IPC moved to strike Plaintiff's
10 amended complaint. Dkt. 19. On March 9, 2009, the Court denied Plaintiff's motion for
11 remand and granted Defendant's motion to strike Plaintiff's amended complaint. Dkt. 26.

12 On March 24, 2009, Plaintiff filed a motion to amend his complaint. Dkt. 27. On
13 April 7, 2009, Defendant responded. Dkt. 30. On March 10, 2007, Plaintiff replied. Dkt.
14 31.

15 II. DISCUSSION

16 Once removal has occurred, a district court has discretion in determining the
17 propriety of post-removal amendments to a complaint. *Newcombe v. Adolf Coors*
18 *Company*, 157 F.3d 686, 691 (9th Cir. 1998). 28 U.S.C. § 1447(e) provides that

19 [i]f after removal the plaintiff seeks to join additional defendants whose
20 joinder would destroy subject matter jurisdiction, the court may deny
joinder, or permit joinder and remand the action to the State court.

21 "The language of § 1447(e) is couched in permissive terms and it clearly gives the district
22 court the discretion to deny joinder." *Newcombe*, 157 F.3d at 691. In exercising its
23 discretion, the Court should consider:

24 (1) whether the would-be-defendants are necessary for just adjudication of
25 the controversy, (2) whether the plaintiff still could bring an action in state
26 court against the putative defendants, (3) whether there has been any
27 unexplained delay in joinder, (4) whether it appears the plaintiff is seeking
to destroy jurisdiction, (5) the apparent merit of the claims against the new
28 parties, and (6) whether the plaintiff would suffer prejudice without the
joinder of the defendants.

1 *See, e.g., Bonner v. Fuji Photo Film*, 461 F. Supp. 2d 1112, 1119-20 (N.D. Cal. 2006).

2 In this case, the Court finds that the post-removal joinder of Mr. Maldonado
3 should be denied. First, Plaintiff has failed to show that Mr. Maldonado is necessary for
4 just adjudication or that he cannot obtain complete relief without Mr. Maldonado's
5 joinder.

6 Second, Plaintiff has failed to show that he can still bring claims against Mr.
7 Maldonado in state court. Plaintiff argues that the statute of limitations is an affirmative
8 defense and that it is uncertain whether Mr. Maldonado would assert this defense. Dkt.
9 31 at 4. The question the Court should consider, however, is the propriety of the
10 Plaintiff's claims and not the possibility that a defendant will waive an affirmative
11 defense.

12 Third, Plaintiff has failed to explain his delay in joining Mr. Maldonado. The
13 triggering event for this civil action is when Mr. Maldonado shot Plaintiff. *See* Dkt. 1 at
14 6, ¶ 2.4. Yet, Plaintiff originally brought suit against only the owner of the premises
15 where the event occurred. *Id.* Plaintiff argues that "[t]he delay [in not joining the
16 shooter] is explained by the global delay in bringing any cause of action." Dkt. 27 at 5.
17 This argument lacks credibility because Plaintiff has failed to explain why his "litigation
18 strategy" did not start with the person who shot him multiple times.

19 Fourth, Plaintiff has failed to show that his sole motive is not to defeat jurisdiction.
20 The procedural posture in which Plaintiff brought this motion suggests that his sole
21 purpose is to defeat federal jurisdiction. *See* Procedural History, *supra*.

22 Fifth, Plaintiff has failed to show that the claims he proposes to assert against Mr.
23 Maldonado are valid. Plaintiff claims that he will bring claims of intentional torts and
24 negligence against Mr. Maldonado. Dkt. 27 at 7. Defendants argue that either claims
25 would be barred by the statutes of limitations. Dkt. 30 at 3-5. While the Court is not
26 directly presented with this question, it appears that Defendants' assertion is valid.

1 Finally, Plaintiff argues that without the joinder of Mr. Maldonado he will suffer
2 from an “empty chair” defendant at trial and will lose the opportunity to collect from Mr.
3 Maldonado. Dkt. 27 at 7. If Plaintiff did suffer prejudice from an “empty chair,” it is
4 only because of his global “litigation strategy.” Moreover, Plaintiff may file a state court
5 action against Mr. Maldonado.

6 Therefore, the Court denies Plaintiff’s motion to amend his complaint because
7 Plaintiff has failed to show that the joinder of Mr. Maldonado is either necessary or
8 warranted.

9 **III. ORDER**

10 Therefore, it is hereby

11 **ORDERED** that Plaintiff’s Motion for Leave to Amend (Dkt. 27) is **DENIED**.

12 DATED this 24th day of April, 2009.

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16 BENJAMIN H. SETTLE
17 United States District Judge
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